



May 8, 2018

U.S. Senate
Washington DC 20510

RE: Oppose Senate Introduction of the Protect and Serve Act of 2018

Dear Senators:

On behalf the American Civil Liberties Union (ACLU), Human Rights Watch, The Leadership Conference on Civil and Human Rights (The Leadership Conference), and NAACP Legal Defense and Educational Fund, Inc. (NAACP LDF), we write to urge you to oppose introduction and co-sponsorship of the Protect and Serve Act of 2018. The Protect and Serve Act would effectively make it a hate crime to “to knowingly cause bodily injury to any person, or attempts to do so, because of the actual or perceived status of the person as a law enforcement officer.”¹

Extending hate crimes protections to law enforcement officers is a profoundly inappropriate and misguided proposal for several reasons. First, police already have substantial protections under federal and state law, rendering this bill superfluous. Second, hate crimes laws are intended to extend protection to historically persecuted groups that have experienced a history of systemic discrimination based on a personal characteristic, such as race, religion, gender, sexual orientation, and disability; law enforcement officers are not a historically persecuted group. Third, this bill signals that there is a “war on police,” which is not only untrue, but an unhelpful and dangerous narrative to uplift. Fourth, bills similar to Protect and Serve that have been introduced in states around the country—so called “Blue Lives Matter” bills—appear to be a political response to the growing national movement for police accountability in the face of continued killings and assaults of unarmed African Americans; therefore, this bill is divisive and will have a negative impact on the relationship between law enforcement and the communities they serve.

¹ Draft legislation, S._____, the Protect and Serve Act of 2018, on file with ACLU, Leadership Conference, and NAACP LDF.

I. Federal and state criminal laws already offer ample protection to police officers.

Federal law already has extremely strong penalties for people who commit crimes against law enforcement officers and other public officials. For example, federal laws impose a life sentence or death penalty on persons convicted of first-degree murder of federal employees or officers,² killing state and local law enforcement officers or other employees assisting with federal investigations,³ and killing officers of the U.S. courts.⁴ All fifty states have laws that enhance penalties for people who commit offenses against law enforcement officers, including for homicide and assault.⁵

Moreover, there is no record that crimes against law enforcement go unprosecuted or are otherwise treated frivolously, a key rationale behind federal hate crimes laws. Hate crime protections are intended to aid prosecution of crimes that are historically under-charged and are typically enacted when law enforcement or prosecutors lack the will, capacity, or legal remedies to prosecute offenses committed against certain individuals or groups.⁶ There is no record to suggest that prosecutors are unwilling or unable to charge individuals with crimes against law enforcement. In fact, crimes against police officers are treated as among the most heinous criminal acts, given the high degree of culpability and punishment attached to such crimes.

II. Hate crimes laws address crimes motivated by a person's status as a member of a historically persecuted group.

Hate crimes are crimes motivated by a victim's status as a member of a historically persecuted or discriminated-against group. Congress,⁷ states,⁸ the law enforcement community,⁹ and

² 18 U.S.C. §1114 (1996).

³ 18 U.S.C. §1121(a)(1)(1996).

⁴ 18 U.S.C. §1503 (1996).

⁵ *See, e.g.,* Monu Bedi, *The Asymmetry of Crimes By an Against Police Officers*, 66 DUKE L.J. 79 (2017).

⁶ *See* 155 Cong. Rec. S10663-02 (daily ed. Oct. 22, 2009)(statement of Sen. Dodd)(noting that the special nature of hate crimes make investigations particularly difficult, especially for small, local police departments); *see also* 153 Cong. Rec. S4446 (daily ed. Apr. 12, 2007)(statement of Sen. Kennedy).

⁷ The 2007 House Judiciary Committee Report on the Hate Crimes Prevention Act found pertinent that broad societal discrimination warranted extension of hate crimes protection to crimes predicated on a victim's sexual orientation, gender, gender identity, or disability and that these groups, along with the classifications of race, color, religion, and national origin, shared a common history of being targeted for hate-based violence. *See* H. REP. NO. 110-13 at 2, 5-6, 10-13 (2007); *see also* H. REP. NO. 111-86 at 5 (2009).

⁸ *See* Allison M. Smith et al., Congressional Research Service, *State Statutes Governing Hate Crimes* (2016), <https://fas.org/sgp/crs/misc/RL33099.pdf>.

⁹ The International Association of Chiefs of Police (IACP) has recommended that hate crimes be defined as those crimes based on "actual or perceived race, religion, ethnicity/national origin, disability, sexual orientation, or, where legally permissible, gender." IACP, *HATE CRIME IN AMERICA SUMMIT RECOMMENDATIONS* (1998), <http://www.iacp.org/ViewResult?SearchID=140>. The IACP and the National Sheriff's Association also supported the expanded definition of "hate crimes" to include sexual orientation, gender, gender identity, or disability. *See* 153 Cong. Rec. S12027 (daily ed. Sept. 25, 2007).

prosecutors¹⁰ all share the understanding of the essential nature of a hate crime as one that is motivated by historically entrenched societal biases against individuals or groups based on immutable traits such as race, religion, gender, sexual orientation, and disability. Federal hate crimes laws are intended to address the unique problem of violence directed towards these historically persecuted groups. Capturing police officers under a federal hate crimes framework would be inconsistent with the common understanding of hate crimes and weaken the purpose of the law as an effective response to prejudice-based violence. Police officers simply do not constitute a historically persecuted or marginalized minority group.

III. The Protect and Serve Act does not advance any stated policy goals, because law enforcement is not subject to increasing or widespread attacks.

The enactment of hate crimes laws should be based on evidence demonstrating a need for greater protection. The hate crimes provision of the Civil Rights Act of 1968 was passed by Congress in response to widespread attacks on African-Americans attempting to vote, attend school, apply for employment, and engage in other federally-protected activities.¹¹ The record leading up to the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 cited compelling FBI statistical evidence showing a copious number of hate-based attacks nationally on protected groups and a dramatic rise in crimes predicated on the victim's identification or perceived identification with a particular sexual orientation, gender, gender identity, or disability.¹² Other vulnerable groups, such as seniors and veterans, were specifically not included in the Hate Crimes Prevention Act, because Congress found there was no record of group-based violence or widely held societal prejudice.¹³

Here, there has been no statistical showing that status as a law enforcement officer has rendered them vulnerable to bias or discrimination in a manner remotely similar to individuals or groups who have been systematically brutalized or deprived of civil rights or equal treatment due to their

¹⁰ The National District Attorneys' Association (NDAA) defines hate crimes as those crimes motivated "by bias against a group or an individual's actual or perceived inclusion in an identifiable group," including the individual's "race or ethnic/national origin, religion, sexual orientation, disability, gender, and age." AMERICAN PROSECUTOR'S RESEARCH INSTITUTE, NDAA, A LOCAL PROSECUTOR'S GUIDE FOR RESPONDING TO HATE, http://www.ndaa.org/pdf/hate_crimes.pdf. The NDAA also supported the definition of Hate Crimes Prevention Act, which extended hate crimes protection to sexual orientation, gender, gender identity, or disability. *See* 153 Cong. Rec. S12027 (daily ed. Sept. 25, 2007).

¹¹ *See* S. REP. NO. 90-721, at 1838-39 (1967).

¹² *See* H. REP. NO. 111-86, at 5 (2009)(noting that between 1991 and 2007 the FBI had identified over 118,000 reported violent hate crimes; for the year 2007, the FBI documented 7,624 hate crimes with racially-motivated bias accounting for approximately half (50.8%) of all incidents, religious bias accounted for 1,400 incidents (18.4%), sexual orientation bias for 1,265 incidents (16.6%), and ethnicity/national origin bias for 1,007 incidents (13.2%)); H. REP. NO. 110-113, at 6 (2007)(citing FBI statistics of more than 113,000 reported hate crimes between 1991 and 2005; in 2005 the FBI documented 7,163 bias-motivated criminal incidents identified by law enforcement agencies and 8,795 victims arising from 8,373 separate criminal offenses. FBI statistics also showed that racially-motivated bias accounted for more than half (54.7%) of all incidents. Religious bias accounted for 1,227 incidents (17.1%), sexual orientation bias accounted for 1,017 incidents (14.2%), followed by ethnicity/national origin bias with 944 incidents (13.7%).).

¹³ *See* H. REP. NO. 111-86, at 13 (2009).

status as a member of a minority group. There is no doubt that police work is a dangerous undertaking, but the reality is that there has been a continuing decline in the number of officers killed or assaulted in the line of duty over the last several decades.¹⁴ In the past ten years, the number of officers feloniously killed has fluctuated, yet not significantly increased or decreased,¹⁵ as have ambush-style killings of officers.¹⁶ Given these facts, this bill perpetuates a false narrative that police are under increasing attack by their communities. Such a message is unhelpful and unsupported.

IV. The Protect and Serve Act is polarizing, harms community-police relations, and does not improve officer safety or wellness.

This bill is being contemplated at a time when our country is in the throes of a national policing crisis, with a never-ending stream of police shootings of unarmed African Americans captured on video. Using hate crimes laws that have historically been developed to give protection to people of color from distinct forms of violence, including police violence motivated by prejudice, is a particularly disconnected and non-responsive policy choice.

The Protect and Serve Act is similar to other “Blue Lives Matter” type bills that create new criminal offenses and penalty enhancements for crimes against police. Collectively, these policy efforts, which have sprung up amid the national call for police accountability, appear to be a political response to the powerful activism of grassroots movements that demand fair and constitutional policing. Rather than focusing on policies that address issues of police excessive force, biased policing, and other police practices that have failed these communities, the Protect and Serve Act’s aim is to further criminalize. This bill will be received as yet another attack on these communities and threatens to exacerbate what is already a discriminatory system of mass incarceration in this country. Further undermining police-community relations in this manner sows

¹⁴ See Radley Balko, *Once again: There is no ‘war on cops.’ And those who claim otherwise are playing a dangerous game*, WASHINGTON POST (Sept. 10, 2015), https://www.washingtonpost.com/news/the-watch/wp/2015/09/10/once-again-there-is-no-war-on-cops-and-those-who-claim-otherwise-are-playing-a-dangerous-game/?utm_term=.144e3c91fa5b; Martin Kaste, *Is There A ‘War On Police’? The Statistics Say No*, NATIONAL PUBLIC RADIO (Sept. 17, 2015), <http://www.npr.org/2015/09/17/441196546/is-there-a-war-on-police-the-statistics-say-no>. Between 2007 and 2016, the number of officers killed in ambush situations were 16, 6, 15, 15, 15, 6, 5, 7, 4, and 17, for each year, respectively. U.S. Dept. of Justice, *Law Enforcement Officers Killed & Assaulted, 2007-2016*, <https://ucr.fbi.gov/ucr-publications>.

¹⁵ Between 2007 and 2016, the FBI reported the number of officers feloniously killed in the U.S. were 58, 41, 48, 56, 72, 49, 27, 51, 41, and 66 for each year, respectively. U.S. Dept. of Justice, *2016 Law Enforcement Officers Killed & Assaulted*, <https://ucr.fbi.gov/leoka/2016/officers-feloniously-killed/tables/table-2.xls>. In 2017, the 44 officers were killed in a fire-arm related incident. Law Enforcement Officers Memorial Fund, *Preliminary 2017 Law Enforcement Officer Fatalities Report*, http://www.nleomf.org/assets/pdfs/reports/fatality-reports/2017/2017-End-of-Year-Officer-Fatalities-Report_FINAL.pdf.

¹⁶ Between 2007 and 2016, the number of officers killed in ambush situations were 16, 6, 15, 15, 15, 6, 5, 7, 4, and 17, for each year, respectively. U.S. Dept. of Justice, *2016 Law Enforcement Officers Killed & Assaulted*, <https://ucr.fbi.gov/leoka/2016/officers-feloniously-killed/tables/table-2.xls>. In 2017, 8 officers were killed in an ambush-style attack. Law Enforcement Officers Memorial Fund, *Preliminary 2017 Law Enforcement Officer Fatalities Report*, http://www.nleomf.org/assets/pdfs/reports/fatality-reports/2017/2017-End-of-Year-Officer-Fatalities-Report_FINAL.pdf.

seeds of division, which ultimately threatens public safety and undermines the work of law enforcement.

Finally, the Protect and Serve Act does nothing to meaningfully improve officer safety and wellness. For example, it does not call for support services, better training, improved safety measures, increased supervision, or any of the other multiple measures available to law enforcement that are widely accepted as promoting officer safety and well-being.¹⁷

For the reasons summarized above, we urge you to oppose introduction and co-sponsorship of the Protect and Serve Act of 2018. There is no justification for creating new hate crime protections for attacks on law enforcement. The groups historically protected by hate crimes statutes bear a legacy of violence that is deserving of heightened protection. At a time when we need to foster healing between law enforcement and our communities, we should not be considering legislation which not only does nothing to advance the goal of officer safety, but will further erode the relationship between police and communities.

Thank you for your consideration of this matter. If you have any questions, please contact Kanya Bennett of the ACLU at 202-715-0808 or kbennett@aclu.org; Sakira Cook of The Leadership Conference at (202) 263- 2894 or cook@civilrights.org; or Sonia Gill Hernandez of NAACP LDF at 202-216-5569 or sgill@naacpldf.org.

Sincerely,

American Civil Liberties Union
Human Rights Watch
The Leadership Conference on Civil and Human Rights
NAACP Legal Defense and Educational Fund, Inc.

¹⁷ See, e.g. President's Taskforce on 21st Century Policing, Final Report of the President's Taskforce on 21st Century Policing 61-68 (May 2015), https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.